

DECISION

13500 PL2
- THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-197620

DATE: April 22, 1980

MATTER OF: Sven Wichman Associates, Inc.

[Protest of Bid Rejection]
DIGEST:

DLG-04446

1. Rejection of low bid for failure to acknowledge material amendment which increased quantity is proper, although bidder allegedly never received amendment, since failure to receive amendment was not result of conscious and deliberate effort by contracting agency to exclude bidder from competition. Bidder bears the risk of nonreceipt of bidding documents.
2. Whether adequate competition and reasonable price has been obtained in particular procurement is subjective determination within administrative discretion of contracting agency.

Sven Wichman Associates, Inc. (Wichman) protests the rejection of its bid and the subsequent award of a contract under Invitation for Bids (IFB) DAAH01-79-B-0892 issued by the Army Missile Command (MICOM), Redstone Arsenal, Alabama.

The solicitation sought bids for a quantity of 78 launcher outrigger arm units. As initially drafted, the invitation sought bids for only 35 units but, prior to issuance of the IFB, MICOM received a requirement for an additional 43 units, increasing the total quantity to 78. MICOM then prepared Amendment 0001 providing for the increased requirement. This increased amount was included in a synopsis of the proposed procurement published in the Commerce Business Daily on October 19, 1979. The IFB and amendment were issued together on October 29, 1979.

At the November 29, 1979, bid opening, it was discovered that four of the seven bidders, including the protester, failed to acknowledge the amendment: their bids were based upon the original quantity of 35 units. MICOM

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apparently considered but rejected the possibility of a split award or a cancellation of the IFB and a resolicitation. Although Wichman was the low bidder at \$996 per unit, its bid was rejected as nonresponsive for failure to bid on the total quantity of 78 units. MICOM then awarded the contract to Abston Machine Shop (Abston), which was the second lowest bidder overall at \$1,089 per unit, and the lowest bidder on the total quantity.

Wichman contends that its failure to bid on the amended quantity should not render its bid nonresponsive since it never received Amendment 0001. It also estimates that its bid on the 78 unit quantity would have been approximately 10 percent below its already low bid. Wichman concludes that the award to Abston was improper. MICOM states that its actions were consistent with prior decisions of our Office involving the failure of bidders to acknowledge amendments and, on this basis, submits that the protest should be denied.

It has been the consistent position of this Office that the bidder bears the risk of nonreceipt of bidding documents and amendments where the procuring activity has complied with the requirements of Defense Acquisition Regulation (DAR) § 2-208(a) (1976 ed.). 52 Comp. Gen. 281, 283 (1972); Empire Painting Company, Inc., B-190294, January 11, 1978, 78-1 CPD 23. Thus, if a bidder does not receive and acknowledge a material amendment to an IFB and this failure is not the result of a conscious and deliberate effort to exclude the bidder from participating in the competition, the bid normally must be rejected as nonresponsive. Porter Contracting Company, 55 Comp. Gen. 615 (1976), 76-1 CPD 2; Western Microfilm Systems/Lithographics, B-196649, January 9, 1980, 80-1 CPD 27. More generally, so long as the Government determines that adequate competition and reasonable prices were obtained for a particular procurement, the inadvertent failure to afford every prospective bidder an opportunity to bid ordinarily will not justify the cancellation and resolicitation of a procurement. 52 Comp. Gen. 281, 283, supra; 34 Comp. Gen. 684 (1955); A. Brindis Company, Inc., B-187041, December 9, 1976, 76-2 CPD 477.

The procuring activity reports that, according to its records, the amendment together with the IFB was mailed to all bidders, including Wichman. There is no indication in the record that nonreceipt of the amendment by Wichman was the result of a deliberate effort by MICOM to exclude that firm from competing. Indeed, we think that

publication of the procurement synopsis in the Commerce Business Daily with the 78 unit quantity evidences an intent to publicize the increased requirement. Under these circumstances, rejection of Wichman's low bid was proper.

MICOM further advises that it believes adequate competition was obtained and that Abston's bid price was reasonable. We have stated that a determination of the adequacy of competition is a substantially subjective determination to which a reasonable degree of administrative discretion must adhere. 50 Comp. Gen. 382 (1970). Abston's bid was less than 10 percent greater than Wichman's and, although four of the seven bidders were disqualified as nonresponsive, only Wichman's bid was lower than the three responsive bids. Under these circumstances, we cannot conclude that MICOM unreasonably determined that adequate competition at a reasonable price was obtained. (We agree that a split award would have been improper in view of the provision in the Schedule expressly requiring bids to be based upon the total quantity solicited.)

This conclusion comports with two of our recent decisions in which we upheld the rejection of bids under circumstances similar to the current protest. See Ikard Manufacturing Co., B-190669, January 23, 1978, 78-1 CPD 58 (4 of 11 bidders failed to receive quantity amendment) and General Aero Products Corporation, B-191870, July 25, 1978, 78-2 CPD 70 (lowest of three bidders failed to receive quantity amendment issued simultaneously with IFB).

For the reasons stated, the protest is denied.

Acting

Milton J. Arnold
Comptroller General
of the United States